

## **DETAILED ACTION**

### ***Claim Objections***

Claims 8 & 14 are objected to because of the following informalities. Regarding claims 8 and 14 it is believed the term “Rhynchosia volobilis” should be “Rhynchosia volubilis” (emphasis added), as known in the art. Correction or clarification is required.

### ***Claim Rejections - 35 USC § 103***

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

**Claims 3-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (KR 1020020026900) in view of Skripnikov (PRODUCTION OF FRUIT AND BERRY WINE AND JUICES).**

In regard to claim 3, Oh discloses obtaining a fruit juice, inoculating fruit juice with yeast and fermenting fruit juice to obtain fruit wine (Abstract). In regard to claim 1, Oh discloses using Acanthopanax (Abstract). One of ordinary skill in the art would have been motivated to use any variety of Acanthopanax depending on availability, season, origin, personal preferences, etc. In regard to claim 3, Oh discloses the fermentation temperature of is from 15-30° C (page 8 of the translation). In regard to claims 3 and 5, Oh discloses addition of sugar to the fruit juice material and adjusting sugar level to 17-30 (page 8 of the translation). Oh further discloses adding yeast and fermenting juice material. In regard to claim 5, Oh discloses the alcohol concentration of 11-

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16%. In regard to claim 4, Oh discloses filtration and maturation of the fruit juice (page 6 of the translation). In regard to claim 6, Oh discloses fruit juice (Abstract).

Oh is silent as to the stopping fermentation.

Skripnikov discloses production of natural fruit and berry wines. In regard to claim 3, Skripnikov discloses addition of sugar to the fruit juice material depending on the desired alcohol content. For example, Skripnikov discloses that in order to produce fruit wine having alcohol content of 14% by volume, the sugar content in the wort/wine material prior to fermentation should be 27 g per 100 ml of wort (page 107), which is in the range as recited. Skripnikov further discloses fermenting the wine material by inoculating yeast at temperature of about 20°C (page 107). Skripnikov further discloses stopping the fermentation when 2g of sugar per 100 ml of wort remains (page 108). In regard to claim 4, Skripnikov discloses filtering of fermented wine and further step of maturation (page 109). In regard to claim 5, Skripnikov discloses alcoholic fermentation of wine from 14 to 17% (page 108). One of ordinary skill in the art would have been motivated to modify Oh in view of Skripnikov and to employ conventional steps and conditions of production of fruit wine. One of ordinary skill in the art would have been motivated to do so, since both references disclose production of fruit wine. One of ordinary skill in the art would have been motivated to stop fermentation when the desired alcoholic strength of the fermented beverage has been reached.

**Claims 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (KR 1020020026900) in view of Skripnikov (PRODUCTION OF FRUIT AND BERRY WINE AND JUICES) as applied to claims 3-7 above, and further in view of Tsivinskij (RU 2,032,727).**

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Oh and Skripnikov are taken as cited above. Oh and Skripnikov do not disclose drying fruit. Tsivinskij discloses production of fruit wine (Abstract). Tsivinskij also discloses that not only fresh fruit and berries could be used, but also frozen, canned or dried fruit may be used in the production of the fruit wine (page 4 col. 2 lines 20-24). Tsivinskij discloses that use of dried fruit for the production of fruit wine allows for the uniform production of wine throughout the whole year, regardless of fruit harvesting season.

Claims 9-12 are rejected for the same reasons as claims 3-7. Further in regard to claims 9-12, one of ordinary skill in the art would have been motivated to modify Oh in view of Skripnikov and further in view of Tsivinskij and to use dried fruit as a source of fruit in the production of fruit wine as disclosed by Tsivinskij. One of ordinary skill in the art would have been motivated to do so in order to achieve uniform production of wine throughout the whole year regardless of fruit harvesting season.

**Claim 8 rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (KR 1020020026900) in view of Skripnikov (PRODUCTION OF FRUIT AND BERRY WINE AND JUICES) as applied to claims 3-7 above, and further in view of Chang et al (KR2002023520) and Avanes'jants et al (RU2,119,942).**

Oh and Skripnikov do not disclose adding extract of Rosa Davurica or Rhynchosia volubilis before fermentation.

Chang et al discloses addition of Rosa Davurica extract to the beverage for its medicinal benefits (Abstract). It was well known in the art that extracts of flowers belonging to the genus Rosa of Rosaceae family have aromatic properties and are used as aromatic additives for the different products. Avanes'jants et al discloses addition of aromatic extracts to the wine/wort

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material prior to fermentation (Abstract). Addition of aromatic extracts to the wine/wort material prior to fermentation allows for the increase of aroma in wines due to the presence of ferments in fermented wort (Abstract). Avanes'jants et al discloses addition of 0.2 to 20kg per 1000 dal (dekaliters) of unfermented wine material (page 4 col. 2 bottom paragraph). One of ordinary skill in the art would have been motivated to modify Oh and Skripnikov and to add the extract of Rosa Davurica to the beverage as disclosed by Chang et al. One of ordinary skill in the art would have been motivated to do so in order to increase health and nutritional value of the beverage as disclosed by Chang et al. One of ordinary skill in the art would have been motivated to add the extract of Rosa Davurica to the wine/wort material prior to fermentation as disclosed by Avanes'jants et al in order to produce wine having increased pleasant aroma, and therefore to improve organoleptic properties of the final wine beverage. One of ordinary skill in the art would have been motivated to modify amount of plant concentrates depending on their aromatic and/or medicinal properties, concentration of the extracts, nutritional and organoleptic profile of the final wine beverage. One of ordinary skill in the art would have been motivated to include other plant materials, including Rhynchosia volubilis for its medicinal properties in order to further improve nutritional properties of the final wine beverage.

**Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oh (KR 1020020026900) in view of Skripnikov (PRODUCTION OF FRUIT AND BERRY WINE AND JUICES) and Tsivinskij (RU 2,032,727) as applied to claims 9-12 above, and further in view of Chang et al (KR2002023520) and Avanes'jants et al (RU2,119,942).**

Oh, Skripnikov and Tsivinskij do not disclose adding extract of Rosa Davurica or Rhynchosia volubilis before fermentation.

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Chang et al discloses addition of Rosa Davurica extract to the beverage for its medicinal benefits (Abstract). It was well known in the art that extracts of flowers belonging to the genus Rosa of Rosaceae family have aromatic properties and are used as aromatic additives for the different products. Avanes'jants et al discloses addition of aromatic extracts to the wine/wort material prior to fermentation (Abstract). Addition of aromatic extracts to the wine/wort material prior to fermentation allows for the increase of aroma in wines due to the presence of ferments in fermented wort (Abstract). Avanes'jants et al discloses addition of 0.2 to 20kg per 1000 dal (dekaliters) of unfermented wine material (page 4 col. 2 bottom paragraph). One of ordinary skill in the art would have been motivated to modify Oh and Skripnikov and to add the extract of Rosa Davurica to the beverage as disclosed by Chang et al. One of ordinary skill in the art would have been motivated to do so in order to increase health and nutritional value of the beverage as disclosed by Chang et al. One of ordinary skill in the art would have been motivated to add the extract of Rosa Davurica to the wine/wort material prior to fermentation as disclosed by Avanes'jants et al in order to produce wine having increased pleasant aroma, and therefore to improve organoleptic properties of the final wine beverage. One of ordinary skill in the art would have been motivated to modify amount of plant concentrates depending on their aromatic and/or medicinal properties, concentration of the extracts, nutritional and organoleptic profile of the final wine beverage. One of ordinary skill in the art would have been motivated to include other plant materials, including Rhynchosia volubilis for its medicinal properties in order to further improve nutritional properties of the final wine beverage.

***Response to Arguments***

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The rejections of claims 1-7 and 9-13 under 35 U.S.C. 112, second paragraph has been withdrawn.

The rejection of claim 1 under 35 U.S.C. 102(a) has been withdrawn due to the cancellation of claim 1.

On pages 5 and 6 of the Reply to the Non-Final Office action mailed 11/03/2009, Applicants discuss amendments of claims.

On pages 6 and 7 of the Reply, Applicants discuss Oh reference and the fact that the reference does not disclose fruit. Examiner respectfully disagrees. As stated in the translation of the reference:

The fruit selection is important than a what in order to manufacture the fruit wine. Reason for the yeast and the sugar contained in the fruit itself influence the alcohol concentration and purity of the fruit wine. The taste of the fruit wine and incense and color is due to be chosen as. And the fruit can manufacture the fruit wine in which the fruit has a marketability. In order to produce the fruit wine of an ampholyte, the fruit has to be selected in consideration of the sweetness degree and yeast etc. contained in the fruit itself. Generally, it is good that the sweetness degree of the fruit is high or an enzyme is very much contained. And the fruit is enough well cooked. With clearly having the inherent color of the fruit inherent it selects (page 4 of the translation).

The fruit is smashed. \*\*\* (K2S205) is processed in the crushed fruit juice (page 8 of the translation).

The manufacturing method of the fruit wine of claim 1 or 2, wherein the fruit has one as a feature selected in the grapes, the cherry, the banana, the orange, strawberry (the strawberry and mountain berries), a prune, the times, the apple, a plum, a feeling, the melon, a tomato, a watermelon, the Cucumis sativus, a kiwi, a mulberry, the Vitis coignetiae PULLIAT, the Actinidia arguta, the Corni Fructus, the Acanthopanax Cortex, the cherry, the cherry than ( claim 3 page 12 of the translation).

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Therefore throughout the whole disclosure Oh refers to the Acanthopanax as fruit, listing it in the same group with other well known fruit such as grapes, cherry, banana, orange, strawberry (the strawberry and mountain berries), prunes, limes, apples, plums, melons, tomatoes, watermelons, kiwi, mulberry, cherry, etc ( claim 3 page 12 of the translation). Since Oh refers to the Acanthopanax as fruit, listing it in the same group with other well known fruit used for wine manufacture, one of ordinary skill would have been motivated to use Acanthopanax fruit as taught by Oh.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VERA STULII whose telephone number is (571)272-3221. The examiner can normally be reached on 7:00 am-3:30 pm, Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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